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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Rulemaking To Amend Parts 1, 2,)
21, and 25 Of the Commission's)
Rules to Redesignate The 27.5-)
29.5 GHz Frequency Band, To)
Reallocate the 29.5-30.0 GHz)
Frequency Band, To Establish Rules)
and Policies for Local Multipoint)
Distribution Service And for Fixed)
Satellite Services)

CC Docket No. 92-297

To: The Commission

**REPLY TO OPPOSITIONS TO
PETITION FOR RECONSIDERATION**

Cook Inlet Region, Inc. ("CIRI"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, submits this Reply to Oppositions to its Petition for Reconsideration of the Commission's Second Report and Order¹ in the captioned proceeding. CIRI filed its Petition for Reconsideration on May 29, 1997.

In its Petition for Reconsideration, CIRI urged the Commission, among other things, to reconsider the decision to offer installment payment plans to Local Multipoint Distribution Service ("LMDS") licensees.² CIRI argued that the availability

1. FCC 97-82 ("Second Report and Order"). The Commission's summary of the Second Report and Order was published in the Federal Register on April 29, 1997. 62 Fed. Reg. 23,148 (Apr. 29, 1997).

2. CIRI bid for and won broadband personal communications services ("PCS") licenses in the Commission's broadband PCS C block auction, C block reauction, and F block auction. CIRI is eligible to pay for these broadband PCS licenses through the Commission's C and F block installment payment programs, and has

0411

of free credit (i.e., financing available without a determination of the debtor's credit-worthiness) fueled dramatic speculation in the broadband PCS designated entity auctions. The Commission is now left to administer substantial loans made to licensees who may not have the resources to make good on their auction bids.

Indeed, in the current proceeding to determine whether these overextended licensees should be relieved of their obligations,³ some C block bidders have asked the Commission to take dramatic action, including writing off most of their bid amounts, rewriting the Commission's ownership rules, and doubling the length of broadband PCS license terms. Some of the same broadband PCS licensees have threatened to mire their broadband PCS licenses in bankruptcy proceedings, and licensees in still other services have demanded access to whatever relief is afforded these C block debtors. Against this background, CIRI urges the Commission to consider whether installment payments continue to represent sound small business policy.

CellularVision USA, Inc. ("CellularVision") and Zip Communications Corporation oppose CIRI's Petition for Reconsideration with respect to the installment payment matter.⁴

made each its installment payments due to date in a timely fashion.

3. See Public Notice: Wireless Telecommunications Bureau Seeks Comments on Broadband PCS C and F Block Installment Payment Issues, DA 97-679 (rel. June 2, 1997).

4. Consolidated Opposition of CellularVision USA, Inc. to Petitions for Reconsideration at 2 (filed July 2, 1997); Opposition and Comments of Zip Communications Corporation on Petitions for Reconsideration at 4 (filed July 2, 1997).

In particular, CellularVision argues that installment payment plans are frequently the only avenues through which smaller business can finance licenses won at auction, and that eliminating these plans will undermine small business participation in the provision of LMDS.⁵ Instead of eliminating installment payments, CellularVision urges the Commission to offer an enhanced payment plan as a way to foster increased small business opportunities.⁶

CIRI has long supported and defended the Commission's efforts to foster increased opportunities for small businesses — particularly in the spectrum auction context. The Commission's installment payment plans were a meaningful part of that effort and helped some small businesses to attract capital that otherwise might not have been available. Nevertheless, it has been argued recently that particularly generous installment payments led to high bidding in the broadband PCS context,⁷ and now the Commission is presented with requests from a number of the parties placing those bids to undo the auction results altogether. To be certain, the Commission's response in the broadband PCS case will bear on all future auctions — including that of LMDS spectrum — and on the actions of all future bidders.

5. CellularVision Opposition at 4-5.

6. Id. at 2, 4.

7. See Thomas J. Duesterberg & Peter K. Pitsch, Wireless Services, Spectrum Auctions, and Competition in Modern Telecommunications, Outlook (Hudson Institute May 1997) at 10-11.

For this reason, CIRI urges the Commission to consider materially increased bidding credits as an alternative to installment payment plans for small businesses. As the Commission determined in February:

substituting a system of larger bidding credits might eliminate the administrative and market concerns associated with installment payments, while nonetheless ensuring opportunities for small businesses to participate in auctions.⁸

The Commission devised a system of enhanced bidding credits to account for the unavailability of installment payments for Wireless Communications Service bidders.⁹ Materially increased bidding credits in the LMDS context also could account for the unavailability of installment payment plans, permitting smaller businesses with commercially financable business plans to compete for licenses without the risk of future government compromise.¹⁰

8. Amendment of Part 1 of the Commission's Rules - Competitive Bidding Proceeding, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making, FCC 97-60, ¶ 34 (rel. Feb. 28, 1997).

9. Amendment of Commission's Rules to Establish Part 27, the Wireless Communications Service, Report and Order, FCC 97-50, ¶ 193 (rel. Feb. 19, 1997).

10. The non-arms length nature of Commission financing may create uncertainty in the valuation of the government obligation and the underlying radio license. The balance sheet of at least one broadband PCS C block licensee filed with the Securities and Exchange Commission reported the license asset value at the present value of the installment payment obligation based on the prevailing rates of interest that the licensee believed would have resulted if an independent lender had negotiated a similar transaction. See Chase Telecommunications, Inc., SEC Form S-1 (May 20, 1997) at F3, F13. In this way, the present value of the government obligation and the federal radio license may be substantially underreported to the public, possibly encouraging auction participants to bid higher at auction in anticipation of obtaining financing on more attractive terms.

At bottom, the risk of future government compromise could undo the Commission's small business programs under Section 309(j). Congress eliminated the availability of tax certificates for minority investors in 1995,¹¹ and now Congress is looking to the Commission's spectrum auction program as an increasingly important source of revenue for the federal budget. If the Commission is forced to bargain with future licensees who cannot pay their obligations to the government, Congress could send the Commission's remaining small business initiatives the way of minority tax certificates. For this reason alone, as Chairman Hundt said recently, "auction winners should make payment for their licenses when they are awarded. The FCC should not be placed in the conflicting roles of regulator of, and creditor to, its licensees."¹²

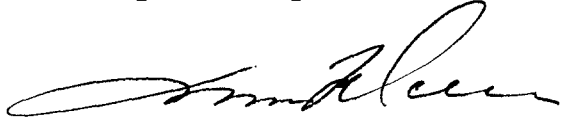
11. See Self-Employed Health Insurance Act of 1995, Pub. L. No. 104-7, § 2, 109 Stat. 93 (1995) (eliminating the minority tax certificate program).

12. Reed E. Hundt, Spectrum Policy and Auctions: What's Right, What's Left, Remarks to Citizens for a Sound Economy 7 (June 18, 1997).

CONCLUSION

For these reasons, CIRI urges the Commission to substitute increased bidding credits for installment payment plans in its LMDS auction rules. CIRI also urges the Commission to include a very small business preference category in its LMDS auction rules and to make clear that delinquency or default in one Commission payment plan will limit a party's eligibility for preferences in the LMDS auction.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Catherine S. Brewer, certify that true and correct copies of the foregoing Reply to Oppositions to Petition for Reconsideration, were delivered by U.S. mail, first class postage pre-paid, on July 11, 1997, to the following:

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